

Title 8, California Code of Regulations

Chapter 8, Office of the Director

Subchapter 2.06. Workers' Compensation-Administration Revolving Fund Assessment, Uninsured Employers Benefits Trust Fund Assessment, Subsequent Injuries Benefits Trust Fund Assessments, Occupational Safety and Health Fund Assessment, Fraud Surcharge and Cal-OSHA Targeted Inspection Assessment

Article 1. Definitions

§15600. Definitions.

(a) Assessable Premium. The premium to which the assessment and/or surcharge is to be applied is the premium the insured is charged after all rating adjustments (experience rating, schedule rating, premium discounts, expense constants, retrospective rating, etc.) except for adjustments resulting from the application of deductible plans or the return of policyholder dividends.

(b) Assessment. Includes those assessments levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Occupational Safety and Health Fund, and the Subsequent Injuries Benefits Employers Trust Fund.

(c) Base Year. For purposes of calculating the self-insured employer assessment factors, that time period as provided by the Office of Self-Insurance Plans pursuant to section 15602. For public self-insured employers, the base year is a fiscal year basis. For private self-insured employers, the base year is a calendar year basis.

(d) Director. The Director of the Department of Industrial Relations.

(e) Expected total current year premium. Total direct workers' compensation premium of all insurers as reported to the Department of Insurance's designated licensed rating organization for the period of January 1 through June 30 of the year immediately preceding the assessment, and adjusted by the Department of Insurance's designated licensed rating organization, to a full year basis.

(f) Indemnity. The payments made by a self-insured employer directly to injured employees or their dependents as compensation pursuant to Labor Code divisions 4 and 4.5 including vocational rehabilitation maintenance and salary continuation payments pursuant to Labor Code sections 4800 and 4850.

(g) Inception date. The inception date of a workers' compensation insurance policy is the normal anniversary rating date of a workers' compensation insurance policy as defined in the California Workers' Compensation Insurance Manual published by the Workers' Compensation Insurance Rating Bureau.

(h) Insured employer. Any employer, including any agency or division of the State of California, who secures workers' compensation insurance coverage under provisions of subdivision (a) of Labor Code section 3700.

(i) Insurer. Any person, including the State Compensation Insurance Fund, authorized to transact workers' compensation insurance in California.

(j) Occupational Safety and Health Fund. The Occupational Safety and Health Fund established pursuant to the provisions of Labor Code section 62.5.

(k) Occupational Safety and Health Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Occupational Safety and Health Fund.

(l) Payroll. Remuneration subject to workers' compensation insurance premium for insured employers and that remuneration to employees of a self-insured employer which would be subject to premium charges if the employer were an insured employer.

(m) Revolving Fund. The Workers' Compensation Administration Revolving Fund established pursuant to the provisions of Labor Code section 62.5.

(n) Revolving Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund.

(o) Self-insured employer. Any employer who is authorized by the Director to self-insure its workers' compensation liability under subdivisions (b) or (c) of Labor Code section 3700. A self-insured employer shall include the State of California. For the limited purposes of the Targeted Inspection Assessment, the term "self-insured employer" shall not include the State of California or a public agency employer.

(p) Subsequent Injuries Fund. The Subsequent Injuries Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(q) Subsequent Injuries Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Subsequent Injuries Benefits Trust Fund.

(r) Surcharge. Surcharge means the "State Fraud Investigation and Prosecution Surcharge" assessed under authority of Labor Code Section 62.6.

(s) Targeted Inspection Assessment. The user fee assessment levied upon self-insured employers to establish and maintain the Cal-OSHA Targeted Inspection and Consultation Fund established pursuant to the provisions of Labor Code section 62.7.

(t) Uninsured Employers Fund. The Uninsured Employers Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(u) Uninsured Employers Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Uninsured Employers Benefits Trust Fund.

Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 51, 62.5, 62.6, 3700 and 3701, Labor Code; Section 1872.83, Insurance Code.

Article 2. Determination of Assessments and/or Surcharge

§15601. Determination of Revolving Fund, Subsequent Injuries Fund, Occupational Safety and Health Fund, and Uninsured Employers Fund Total Assessment.

On or before November 1 of each year, the Director shall, in accordance with Labor Code Section 62.5:

- (a) Determine the total amount of funds appropriated for the Division of Workers' Compensation;
- (b) Determine the aggregate amount of the assessment for the Subsequent Injuries Fund;
- (c) Determine the aggregate amount of the assessment for the Occupational Safety and Health Fund; and
- (d) Determine the aggregate amount of the assessment for the Uninsured Employers Fund.

Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

§15602. Allocation of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge Among Insured and Self-Insured Employers.

(a) Not later than November 1 of each year, the Director shall determine the proportional payroll allocation factors to use to determine the total insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge, and the total self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge as follows:

(1) The aggregate payroll of all insured employers shall be determined from payroll information provided by the Department of Insurance's designated licensed rating organization for the most recent period available.

(2) The aggregate payroll of all self-insured employers shall be determined from payroll information provided by the Office of Self-Insurance Plans of the Department of Industrial Relations excluding payroll of insured employees of the State of California for the most recent base year available.

(3) The total payroll information shall then be determined by combining the most recent insured employer payroll with the most recent self-insured employer payroll.

(4) The insured employer proportional payroll allocation factor shall be determined by dividing the insured employer payroll by the total combined payroll.

(5) The self-insured employer proportional payroll allocation factor shall be determined by dividing the self-insured employer payroll by the total combined payroll. The self-insured employer payroll shall not include that portion of the State of California's payroll which was covered by a policy of insurance.

(b) The total insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge shall be determined by multiplying each respective assessment and/or surcharge by the insured employer proportional payroll allocation factor.

(c) The total self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge shall be determined by multiplying each respective assessment and/or surcharge by the self-insured employer proportional payroll allocation factor.

Authority cited: Sections 54, 55, 62.5 and 62.6, Labor Code. Reference: Sections 62.5 and 62.6, Labor Code.

§15603. Determination of Insured and Self-Insured Employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge Factors.

(a) The insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge factors shall be determined by dividing the total amount of each respective insured employer assessment and the total amount of the insured employer surcharge, as the case may be, by the expected total current year premium, as determined by the Department of Insurance's designated licensed rating organization.

(b) The self-insured employer Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers

Fund Assessment, and/or Fraud Surcharge factors shall be determined by dividing the total amount of each respective self-insured employer assessment or surcharge, as the case may be, by the total amount of workers' compensation indemnity paid under California law by all self-insured employers during the most recent base year available, as determined by the Office of Self-Insurance Plans.

Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Sections 62.5 and 62.6, Labor Code.

§15604. Surplus in Funding.

(a) In the event of an unexpended surplus in the Workers' Compensation Administration Revolving Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Revolving Fund assessment.

(b) In the event of an unexpended surplus in the Subsequent Injuries Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Subsequent Injuries Fund Assessment.

(c) In the event of an unexpended surplus in the Occupational Safety and Health Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Occupational Safety and Health Assessment.

(d) In the event of an unexpended surplus in the Uninsured Employers Fund balance for a fiscal year, the balance shall be carried forward and credited to the subsequent year's Uninsured Employers Fund Assessment.

Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.

Article 3. Collection of Assessments and/or Surcharges

§ 15605. Collection of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Self-Insured Employers.

(a) The Director designates the Manager of Self-Insurance Plans to collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge from self-insured employers on the Director's behalf.

(b) No later than December 1 of each year, the Manager of Self-Insurance Plans shall bill each self-insured employer for the amount of the individual self-insured employer's Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud

Surcharge. The billing shall identify each assessment and/or surcharge separately and shall include the calculations utilized to determine each assessment factor. Each individual assessment and/or surcharge shall be determined by multiplying the self-insured employer assessment factor by the total amount of worker's compensation indemnity paid and reported by each self-insured employer on its Self-Insurer's Annual Report during the base year, as determined by the Office of Self-Insurance Plans. The Self-Insurer's Annual Report shall include all indemnity payments as defined in section 15600 (e).

(c) The amount of any assessment and/or surcharge shall be paid to the Office of Self-Insurance Plans within 30 days of the billing. Upon the request of any Joint Powers Authority, the Manager may agree to bill the Joint Powers Authority directly for the total amount of each assessment and/or surcharge owed by its public agency members.

(d) In the event the Manager collects funds in excess of the total self-insured employer assessment in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Occupational Safety and Health Fund Assessment; (4) Uninsured Employers Fund Assessment; and/or (5) Fraud Surcharge, such excess funds shall be paid over to the Director to be held in a trust account and credited to the next year's respective assessments and/or surcharge on self-insured employers.

(e) Should the Manager determine that any self-insured employer has understated or overstated its total payroll or indemnity paid on the self-insured employer's annual report, the Manager may issue a corrected billing.

(f) If an employer has paid the assessments and/or surcharge as an insured employer, and during the year of such assessments and/or surcharge is granted a certificate of consent to self-insure, the newly self-insured employer is not required to pay an additional assessments and/or surcharge as a self-insured employer for the current assessments and/or surcharge year. Such an employer shall submit to the Manager a copy of the assessments and/or surcharge billing paid as insured employer in lieu of payment as a self-insured employer.

(g) A self-insured employer that does not have a self-insurers' annual report on file with the Office of Self-Insurance Plans which covers the base year of the assessments and/or surcharge, and that did not pay the assessments and/or surcharge for the base year as an insured employer, shall pay the assessments and/or surcharge through the Office of Self-Insurance Plans.

(1) To enable the Manager to determine such self-insured employer's liability for the assessments and/or surcharge, each such self-insured employer shall file a report prescribed by the Manager, setting forth such self-insured employer's total annual payroll for the base year, and the total workers' compensation premium paid for each calendar quarter of the preceding year.

(2) The Manager shall bill the self-insured employer by applying the self-insured employer assessment factors to the last annual premium paid by the self-insured employer until the self-insured employer's experience as a self-insured employer exceeds two complete calendar years for private self-insured employers or two complete fiscal years for public self-insured employers.

(h) A self-insured employer that ceases to be self-insured and ceases to operate as a functioning employer with no legal requirement to secure the payment of compensation, but continues to have open workers' compensation claims arising from the period of self-insurance, shall continue to be liable for assessments and/or surcharge for a period of 3 calendar years following the termination, revocation, or surrender of the employer's certificate of consent to self-insure. The Manager shall bill the former self-insured employer in accordance with this Section.

Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

§ 15606. Collection of Advances Against Insured Employers.

(a) Not later than December 1 of each year, the Director shall notify each workers' compensation insurer, of the amounts due from the insurer on behalf of its policyholders for, respectively, the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Uninsured Employers Fund Assessment, Occupational Safety and Health Fund Assessment, and the Fraud Surcharge levied pursuant to the authority of Labor Code Sections 62.5 and 62.6 and these regulations. The notice shall include a bill that sets forth separately the total amounts of the assessments and the surcharge.

(b) The Insurer advances against the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge amounts shall be calculated by multiplying the insurer's California direct written workers' compensation premium as reported in the most recent year's financial statement on file with the Insurance Commissioner, multiplied by the ratio of the expected total current year premium to the total direct written workers' compensation premium of all insurers as reported in the latest year's annual financial statements on file with the Insurance Commissioner by the respective factors determined pursuant to subsection (a) of Section 15603 of these regulations.

(c) Where the amount of the assessments or surcharge owed is less than \$5.00 the Director may elect not to bill the insurer therefor.

(d) Each insurer shall pay to the Director one half of the amounts billed under subsection (a) on behalf of its insured employers on or before the following January 1. Each insurer shall pay the balance of the assessments and surcharge to the Director on the following

April 1.

(e) Upon agreement of the affected insurers, the Director may elect to consolidate in one billing the assessments and surcharge of all insured employers that are insured by insurers under the same management, direction and control.

(f) In the event the Director collects advances from insurers in excess of the total assessments and surcharge due from insured employers in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Occupational Safety and Health Fund Assessment; (4) Uninsured Employers Fund Assessment; and/or (5) Fraud Surcharge, the excess funds shall be held by the Director in a trust account and credited to the subsequent year's total respective assessments and surcharge on insured employers.

(g) Commencing with the assessment payment due April 1, 1993, the insurer shall submit a summary report on a form provided by the Director, which includes the following information: (1) the total amount of assessments and surcharges billed insured employers by the insurer; (2) the respective factors used by the insurer in assessing and surcharging insured employers.

(h) The summary report due April 1, 1993 shall include the information specified in this subsection for all workers' compensation insurance policies with an inception date between August 1, 1990 and December 31, 1991. Commencing April 1, 1994, the summary report shall include the information specified in this subsection for all workers' compensation insurance policies with an inception date in the next preceding calendar years.

Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

§ 15607. Collection of Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Insured Employers.

(a) Every insurer shall collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge required by this article and Labor Code Sections 62.5 and 62.6, respectively, from each employer insured by it by applying a separate charge to all workers' compensation insurance policies issued by such insurer with an inception date in the year beginning January 1 after the determinations required by Sections 15601 and 15601.5 of these regulations. The amount of the assessment and surcharge shall be determined by multiplying the insured employer's estimated annual assessable premium by the assessment factors determined by the Director pursuant to

subsection (a) of section 15603. The assessment factors in effect on the inception date of the policy shall be used to calculate the separate charges relative to that policy, including any additional or return premium.

(b) The respective amounts of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud surcharge shall each be rounded to the nearest whole dollar, and be respectively shown in the policy as "Workers' Compensation Administration Revolving Fund Assessment (amount)," "Subsequent Injuries Benefits Trust Fund Assessment (amount)," "Occupational Safety and Health Fund Assessment (amount)," "Uninsured Employers Benefits Trust Fund Assessment (amount)," and "State Fraud Surcharge (amount)".

(c) Commencing with policies effective on and after January 1, 1993, the insured employer's separate charges calculated under subsection (a) above shall be collected in full with the initial payment of assessable premium. If additional premium becomes due under the policy, the final amount of the separate charges shall be adjusted with the final premium bill for the policy. In the case of a retrospective rated policy, the respective assessment and/or surcharge should be applied to the policy premium at issuance, with recalculation at audit, and application of the factors to any retrospective adjustment premium.

(d) Notwithstanding the requirements of this Section, an insurer may elect not to bill an insured employer for the assessments and surcharge for the additional premium due under the policy if the amount of the additional assessments or surcharge does not exceed \$10.00. In the event a return premium is due the employer, the insurer shall return a pro rata share of assessments and surcharge previously paid by the employer unless the assessments and surcharge overpayment does not exceed \$10.00.

(e) A self-insurer whose certificate has been revoked during the base year or during the calendar year prior to the current assessments and/or surcharge billing by the Manager shall be exempt from payment of the assessments and/or surcharge as a self-insurer.

(f) If an employer has paid the assessments and/or surcharge as a self-insured employer, and during the year of such assessment and/or surcharge obtains a policy of workers' compensation insurance, the newly insured employer is not required to make assessments and/or surcharge payments as an insured employer for that year's assessments and/or surcharge. Such an employer shall submit to the insurer a copy of the assessments and/or surcharge billing paid as a self-insured employer, in lieu of payment as an insured employer.

Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5 and 62.6, Labor Code; and Section 1872.83, Insurance Code.

§ 15611. Collection of Interim Assessments.

(a) Notwithstanding the provisions of this subchapter, if the Director determines that there are insufficient funds to support the Workers' Compensation Administration Revolving Fund, the Subsequent Injuries Fund, the Occupational Safety and Health Fund, or the Uninsured Employers Fund for fiscal year 2003-2004, or any fiscal year thereafter, the Director may collect a single interim assessment for these respective funds, in an amount determined by the Director, to provide sufficient funding for these funds.

(b) Any assessment collected under this Section shall not reduce the amount to be collected in the subsequent year's assessments, except as provided by Section 15608 of these regulations.

(c) Any assessment collected under this Section shall be included on the next annual report required under Section 15606(g) of these regulations.

Authority cited: Sections 54, 55 and 62.5, Labor Code. Reference: Section 62.5, Labor Code.